

Monday, November 2, 2009

Texas cities win case over hotel Web sites

Austin Business Journal - by [Jacob Dirr and Jeff Bounds](#) Staff Writers

A group of 170 Texas cities, including Austin, have won a \$20 million verdict in a class-action lawsuit in San Antonio against online hotel booking companies in the alleged failure to pay hotel occupancy taxes.

But the money will not be seen anytime soon because of anticipated appeals that could drag on for a year or two, said Steven Wolens, lead counsel for Dallas-based **McKool Smith**, who is representing Texas cities. A breakdown of how precisely much each city is to receive was not available.

Austin has “millions” due to them, Wolens said, but neither he nor a city-employed lawyer knew the exact amount.

Similar cases are filed across the U.S. against hotel booking web sites, Wolens said. Defendants in the San Antonio action include Dallas-based **Hotels.com** and its Bellevue, Wash.-based corporate parent, **Expedia Inc.**; Southlake’s **Travelocity.com**, a unit of **Sabre Holdings**, and Norwalk, Conn.-based Priceline.com Inc.

The travel companies plan to appeal, according to Andrew Weinstein, a spokesman for the Washington, D.C.-based **Interactive Travel Services Association**. The group was not a party to the litigation but represents all of the companies that were sued.

“We’re very confident of our prospects” on appeal, Weinstein said.

One issue the online travel companies won on with the San Antonio jury was the question of whether they were collecting taxes but not remitting them, Weinstein said. The cities had asked for \$40 million in punitive damages on that issue, Weinstein said. The panel ruled that the travel firms did not collect the taxes in question, he said.

On another front, the San Antonio jury decided that the online reservations companies “control hotels” in Texas and, therefore, are responsible for collecting hotel-occupancy taxes. In a statement, Expedia said that element of the verdict “is unsupported by the facts of the case and the law.”

While West Coast cities have had early victories in administrative court hearings, the judgment awarded in the Texas class-action suit is the first jury decision in the country, Wolens said.

According to the lawsuit filed in May 2006, online booking companies underpaid taxes rather than the actual retail rates charged to customers.

For example, online wholesalers purchase rooms at discounted rates, and then make a profit by reselling the rooms to consumers at a markup., according to McKool Smith.

Typically, if a company like **Expedia.com** pays \$70 for a hotel room and later resells it for \$100 plus taxes, the company will only pay taxes for the lesser amount, according to McKool Smith.

Weinstein disputed the law firm's assertion and said the companies do not buy blocks of rooms in advance. Instead, they list available rooms and enable users to search for the hotel room that best meets their needs, he said.

The four-week trial, held in the U.S. District Court for the Western District of Texas, concluded after five hours of jury deliberation, the firm said.

The jury's \$20 million verdict could increase with statutory penalties and interest, according to the announcement.

Wolens said any appeals process could increase the amount owed if the verdict is upheld and his firm will file for increased damages and interest payments if that is the case.

The verdict could impact Texas state coffers, which has its own administrative claim against the online booking companies, but has not yet filed suit, Wolens said.

"I think the state is owed well in excess of \$20 million," he said.

Jacob Dirr is a staff writer for the Austin Business Journal. Jeff Bounds is a staff writer for the Dallas Business Journal.